

U.S. DEPARTMENT OF AGRICULTURE

ANIMAL WELFARE LISTENING SESSION

Morning Session

Wednesday, March 23, 2005

10:15 a.m.

U.S. Department of Agriculture
12th & Jefferson Drive, SW
Jamie L. Whitten Federal Building
Room 107A
Washington, D.C.

P R O C E E D I N G S
Opening comments of Under Secretary Bill Hawks
Comments made by Secretary Mike Johanns
(Not on the record.)

MS. LEAHY: I'm Debbie Leahy with PETA. A couple of issues I wanted to bring up today that have to do with responsiveness and disclosure. We remain frustrated that FOIA requests are not being responded to in a timely fashion. At one point we were receiving inspection reports from the regional offices in a two week period. Now, it's been a year that we're still waiting for inspection reports that we requested.

Another issue I wanted to bring up is that we're not receiving notification of whether the USDA has acted upon complaints we file and, if so, what the findings were. We're also concerned that the USDA no longer issues press releases about enforcement actions. This either indicates a dramatic drop in enforcement or an attempt to protect licensees and to deny the public some critical information about cruelty issues and potentially dangerous situations with exhibitors.

And we'd also like to bring up something that we've brought up in the past. The fact that the Animal Welfare Act needs to clarify and establish a reasonable minimum age for the transport of exotic species. We have baby elephants who are dying on the road. We have primates who are left with lifetime emotional scars because they're being prematurely removed from their mothers. And we have 11-day-old tiger cubs who are dying on the road as they're being hauled from fair-to-fair.

The Animal Welfare Act establishes a minimum age for the transport of puppies and kittens, we think that it's vital that this include other species that are regulated by the Animal Welfare Act. That's it.

MS. PICKHARDT: The next speaker is not Melanie, it's Sue Leary, sorry about that, you don't have as much notice. And then Sue will be followed by Kristie Phelps.

MS. LEARY: Good morning, it's Sue Leary, American Anti-Vivisection Society. And I just want to say good morning, Under Secretary Hawks and to all the USDA staff and colleagues and other observers.

On behalf of the American Anti-Vivisection Society, I want to thank everyone involved in presenting us with this opportunity today to present our perspective about USDA enforcement of laws protecting animals.

Tina Nelson, AVS Executive Director, and I are here today and pleased to be here.

AVS, you may know, as a nonprofit animal advocacy educational organization, has been monitoring the treatment of animals in laboratories since 1883. It was founded for the purpose of opposing experimentation on animals and continues to work to that end. And also opposes and works to end other forms of cruelty to animals.

Our affiliate, the Alternatives Research & Development Foundation, ARDF, has been engaged with this department along with AVS on a number of important issues and so, we are speaking from our experience.

Because of the time constraints, and I have my eye on that light, I will focus on three areas of concern. Number one is coverage of birds, rats, and mice under the Animal Welfare Act.

AS is well known to most of the people in this room, AAVS's affiliate ARDF, reached settlement with USDA on this issue in the fall of 2000, that's four and a half years ago. Subsequent congressional action eventually resulted in the change of the definition of animal in the act itself. It now excludes birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research.

In response to the APHIS Notice of Proposed Rulemaking, AAVS and ARDF worked with knowledgeable colleagues to prepare substantive comments, which were submitted on November 1, 2004, on behalf of 28 of the leading U.S. animal protection organizations representing over 11 million constituents.

The comments detailed care standards and provided guidance for USDA on expectations of enforcement. We observed that it is clear from the statutory language that the scope of the exclusion does not extend to birds, rats, and mice broadly used in research, but only to those birds and the two genera of rats and mice noted above specifically bred for that purpose.

So, we are a little concerned that we have been hearing indications from USDA staff that the department does not intend to regulate birds used in research, even if they were bred for use in research. We have heard from USDA staff that there are no plans to regulate birds at all in research as it stands now and this would be a serious breach we consider of USDA's duties to enforce the AWA.

So, I just wanted to say on behalf of all the groups that submitted comments, of course, we still believe birds, rats, and mice should fall within the protections of the AWA. So, I will submit written comments for you.

MS. PICKHARDT: Yes, any additional comments, you can submit and they will be reviewed. You can leave them up front here with us. And after Kristie Phelps, is Anne Devian [ph].

MS. PHELPS: Hello, I'm Kristie Phelps and I'm speaking on behalf of In Defense of Animals and I have a couple of FOIA issues. We used to be able to fax a letter to regional offices to request an inspection and we would have an inspection report and we'd have and we'd have the report in two weeks' time. Now the regional offices have been instructed not to respond to such requests but, rather, to forward to them to the main USDA FOIA office in D.C. And

there, it can take two years or longer to respond to the request.

I'd also like to concur with Debbie Leahy of PETA that the USDA should be responding to these FOIA requests in a timely manner. For example, on March 4, 2005, IDA received a letter responding to a FOIA request we submitted in February of 2001, asking if we would still like the information. Delays of four years in responding to FOIA requests are simply not acceptable.

With regard to lab inspections, IDA congratulates the USDA for filing charges against the University of California at San Francisco for its long history of violating the Animal Welfare Act. The complaint states that the gravity of UCSF's violations is great. Now, we hope that the USDA will proceed with the case and force the UCSF to pay a fine that is commensurate with the severity of the institution's violations. Anything less than the maximum allowed under the law will be a slap on the wrist to this institution that receives over \$400 million in federal research grants annually.

I would also like to address the issue of captive elephants. We are aware that captivity-induced foot problems are the leading cause of death in captive elephants. Foot problems are a clear indication that elephants are being held under inadequate space and conditions, in violation of the Animal Welfare Act.

For example, the situation with Calli, an Asian elephant who lived at the San Francisco Zoo, as a case in point. Calli's feet were allowed to deteriorate to the point where she was left virtually toeless. A result of repeated cutting away of the flesh by veterinarians dealing with the effect of persistent abscesses.

Zoo veterinarians continued to cut away at Calli's rotting feet for years without ever addressing the underlying cause of this painful problem--the inadequate conditions under which she was held.

This scenario is not unique, it's being repeated at zoos across the country. And so we would like to know why the USDA does not uphold the adequate space regulation with regard to elephants in zoos. Does the USDA look at medical records for the elephants in its zoos that it inspects? Does the USDA inspector physically examine the elephant's condition? We would like to ask the USDA to investigate zoos where elephants are suffering from persistent and painful foot problems. Thank you.

MS. PICKHARDT: Just in time. After Nancy Blaney will be Nancy Lorraine Hoffmann.

MS. BLANEY: Hi, my name is Nancy Blaney and I'm with the Doris Day Animal League. And, again, I want to thank the Under Secretary and Dr. DeHaven and others for holding this meeting, we appreciate it very much.

I first want to follow up on Debbie Leahy's comments with regard to minimum age for transportation of animals and suggest that--and we have included it in our comments under the birds, rats, and mice rulemaking--that under no circumstances should the sale or transport and commerce of unweaned parrots be allowed. Unweaned birds are at greater risk of succumbing to the stress and dangers of transport. Our comments that we submitted detail the specific problems that arise due to climate and feeding needs. And debunk the myth that hand-rearing is better than parent-rearing for birds and, consequently, these birds should remain with their parents until they are weaned.

Also with respect to the birds, rats, and mice comments, we also would like to suggest that most birds that are in the retail pet trade have either been captured from their native countries or are only a few--a couple of generations removed from being in the wild. And, consequently, should be categorized under the exotic or wild animal definition within the Animal Welfare Act and, therefore, their retail sales should also be regulated.

Third comment, with respect to birds, rats, and mice: We do realize that this is very complicated rulemaking, but we hope that it will proceed expeditiously. We're somewhat, not hopeful about the speed of that, since the--as we affectionately call it, the "kitchen sink" proposal took four years--but we hope that given the need to have these regulations in place so that the animals that remain to be covered will be covered, will be done as quickly as possible.

I also wanted to mention that with regard to what we, affectionately call, again, flying pets or pets transported on planes--I understand that the FAA has since amended its earlier rulemaking so that they will now be receiving the reports. But I'm not aware of the Memorandum of Understanding between the USDA and FAA having been completed, so that USDA will get that information if there is a need to proceed with any investigations.

And, also, that training for the baggage handlers as required under the law should take place and some sort of protocol be put in place.

And FAA, also, is awaiting a number from OMB. We know that this is not USDA's rulemaking, but we hope that you will coordinate with FAA to get OMB moving on this. Thank you very much.

MS. PICKHARDT: After Nancy Hoffmann, we will have Mimi Brody.

MS. HOFFMANN: Thank you very much. Mr. Under Secretary, it's delightful to be here and to see you working once again. I've had the occasion to see you do a number of these and I think they're very valuable.

I'm a former Ag Committee chair in the New York State Senate and during the time that I served I was able to

pass a number of pieces of legislation which I often thought really should be done at a federal level; two in particular, come immediately to mind: One deals with the double-decking transportation of horses. We were able to successfully stop that in New York State, but I believe that it is a national problem. The horses are simply not able to stand up to their full height in that confined space. It would seem to be a fairly reasonable thing that I think most people, including all legitimate horse owners would agree to.

The other one that I found problematic, dealt with soring of horses for the very unique category of Tennessee Walkers. It is not exclusive to all Tennessee Walker owners, but there is a category, it is a matter of great discussion among the horse industry and it does strike me as something that could be handled at the federal level.

Two things that I found as a common denominator in addressing issues of animal welfare that I think we could probably explore more effectively deal with educating people at a very early age to be better policy makers through on-farm visits.

I started a program that provided educational opportunities to school children visiting farms, encouraging certain farmers to open their farms and their homes and to discuss and receive questions from kids. If you hear a question from an eight-year-old that's difficult to answer, it's probably going to be even more difficult when that eight-year-old becomes a policy maker. People who own animals need to get prepared for that and start making the necessary adjustments.

And the other area that I think we could probably do a better job is in enforcement through law enforcement. I found it necessary to provide special training to the New York State Police so that they would know how to handle an animal rescue operations. We had situations where I would get the call about horses in distress because there was no other law enforcement venue that really knew how to put the wheels in motion and then we would work to bring in the appropriate people from the Humane Society or whatever other organizations could be involved. But they were very often frustrated at not knowing how to pull together the emergency services.

In one instance, I even managed to prevail upon the president of an agricultural college to go and get a trailer large enough to personally do a horse rescue in an extreme situation and then arrange for boarding space at the New York State fair grounds stables.

So, those I think could be assisted with Homeland Security's money, which is now being used in a wide variety of areas to assist in local and state law enforcement activities and I don't think we should forget animals when we're in that area. Thank you.

MS. PICKHARDT: After Mimi Brody will be Cathy Liss.

MS. BRODY: Good morning. My name is Mimi Brody and I'm Director of Federal Affairs for the Humane Society of the United States, which has 8.6 million supporters nationwide. We appreciate this opportunity to discuss concerns we have regarding the Animal Welfare Act and animal care program.

We've worked hard over the years, along with our colleagues in other organizations to marshall but strong bipartisan support in Congress for the animal care budget. Last year, we had a record 47 senators and 135 representatives join on letter seeking funding to ensure the Welfare Act is enforced as the public expects. We've been very pleased to see, as a result of this effort, an increase of 84 percent in Animal Welfare Act funding over the past six years a cumulative total of \$39.3 million that has allowed for more than 100 inspectors compared to about 60 during the 1990s.

A key part of the expectation of the public for adequate enforcement is that USDA will impose meaningful consequences when people subject to AWA requirements fail to comply.

Another expectation is that USDA will use the funds cost effectively so that scarce dollars will go a long way.

I remain concerned, as Debbie and others have mentioned--and as I've expressed over the past few years to Dr. Gibson, Dr. DeHaven and others that the Department is not getting the word out about specific AWA enforcement actions or imposing strong enough penalties to have a meaningful deterrent effect on potential violations.

Press releases that focus on particular cases, providing enough detail to generate media interest can be a powerful tool to help prevent violations at other facilities in the future. I'm on the e-mail list to receive APHIS press releases and I've only seen a few on Animal Welfare Act cases. There was a small flurry in September 2003 and scarcely any since.

Some years ago, USDA used to put out detailed press releases on specific cases and distribute them in a targeted way to the local media market. I would like to be able to tell those we work with in Congress that the agency is finally back to that effective approach, ensuring the biggest bang for the buck by publicizing enforcement actions so that they can have the maximum ripple effect.

I also would like to hear what proportion of fines are actually collected, as compared to fines that are suspended. When the agency tells violators they don't have to pay fines, that obviously sends a message to them and others that noncompliance will bring a slap on the wrist, not serious consequences.

Finally, we've heard reports that the Eastern region has become more lenient in its inspections than the Western region. I'd very much like to hear how the department is addressing that concern. Thank you so much and thanks for hosting this.

MS. PICKHARDT: Cathy Liss will be followed by Chris Hyde.

MS. LISS: Thank you, I'm Cathy Liss, President of the Animal Welfare Institute. We're pleased--thanks very much for the opportunity to come here, Under Secretary{,} Dr. DeHaven. In 2000, USDA conducted a survey of housing of primates to assess implementation of the 1985 mandate for a physical environment adequate to promote the psychological well-being of primates.

There were some oversights that needed to be addressed, but we believe it was a good start. We respectfully request a follow-up survey, now that it's five years later to assess continuing progress, we hope, in complying with this now 20-year-old requirement under the law.

Of particular importance should this be done is the need for USDA to distinguish between breeding animals and research animals as this skews the data immeasurably.

As Mimi Brody mentioned, we are concerned about a disparity between the Eastern and Western regions. It may be that OIG is addressing it through the audit that is currently being conducted, but there is both an imbalance between the strength of enforcement going on and the numbers of inspectors that are out doing the job; with inspectors in the East having a fairly light load and inspectors in the West being severely overburdened. We hope that there can be increases made in the numbers of inspections and that there is {not} an attempt to keep an equal balance in the number of inspectors that are doing the job.

As was mentioned with the Freedom of Information Act, there's been a damming of the flow of information regarding enforcement of the law. USDA has not published its annual reports to Congress, either, regarding enforcement of both the Animal Welfare Act and the Horse Protection Act. It need not be produced in hard copy, but is essential in some form, be it electronic or otherwise, this document provide an excellent summary of implementation of the law during the year. It provided both Congress and the general public with the basic facts and figures, including the numbers of inspections conducted; number of cases brought and resolved; total amount of fines collected; number of animals covered by the law used for research, experimentation, and testing.

I might also add that this year will be that next will be the 40th year anniversary of the Animal Welfare Act, which presents a good opportunity to highlight the department's work. We, too, have Freedom of Information Act requests that are outstanding for four years. We seek to

support the job done by USDA, but the usefulness of such information diminishes greatly with age and fails to provide anything close to a realistic picture of the current program.

Finally, I'd like to encourage that inspection reports need to focus on making sure they are complete and provide adequate detail of the apparent violations of law, rather than an overwhelming concern with spelling and grammar and not putting inappropriate information into them.

I have {both} an inspection {and} report that {announced} {states it is} an "announced" inspection. All inspections should be unannounced. And, also, another document I'd like to submit regarding FOIA. Thank you.

MR. {HEYDE}: My name is Chris Hyde.

MS. PICKHARDT: I'm sorry, I just want to say that you'll be--following you will be Edward Greer of CAPS.

MR. {HYEDE}: I'm Chris Hyde with the Animal Welfare Institute. As you just listened to my boss, Cathy Liss, we represent an educational organization founded in 1951 to alleviate unnecessary pain and fear inflicted on animals by people.

We are stalwart supporters of the Animal Welfare Act. In fact, our legislative division, the Society for Animal Protective Legislation worked toward the adoption of the original 1966 law and each of its amendments and sought sound regulations and enforcement of the law and has worked diligently needed funding for the program.

We have given similar support to the Horse Protection Act. And I have a couple of the publications that we produced that I'll give to you, as well.

I wish to briefly discuss the Horse Protection Act and the USDA's failure to provide even a reasonable level of enforcement for this act. I recently attended a similar listening session chaired by Dr. Gibson on this and where all of the speakers came and were clearly represented our point of view that there has been a failure to enforce this law.

The most effective of reducing the showing of horses who have been sores, is to have animal care inspectors present at the shows and to increase the penalties assessed to violators of the law. Animal Care has been restricted to attending only about 10 percent of horse shows because of a shortage of funding. Unfortunately, the totals of penalties assessed for violations of the law have dropped to a negligible amount. Unless 1) funding is provided to enable Animal Care to attend more events; and, 2) increase penalties are assessed, the industry will continue to defy the law with impunity.

Lack of financial support has made it necessary for Animal Care to rely heavily on the industry to assume responsibility for enforcement of the law. This is the same industry that has turned a blind eye to compliance with the law since 1970. Designated Qualified Persons, DQPs, are the inspectors from industry who are supposed to assist Animal

Care in identifying sore horses and pursuing action against the individuals who are responsible.

The history of the DQPs reveals their failure to achieve a level of enforcement of the unbiased, well-trained, professional inspectors who work for Animal Care. The following data for horses shown with pads on their feet to accentuate their gait in calendar 2000--the last amount of data that we do have from reports, the rate at which DQPs turned down these horses for soring was 2.4 percent. The turndown rate was 39.1 percent, when government inspectors were present to oversee the activities of DQPs.

And, on a nice note, I would, certainly like to express our gratitude for the USDA's enforcement of shutting down the random source dealer C.C. Baird in Arkansas. That had been going on for a long period of time and there's a great amount of fines that have been levied against him and we're certainly pleased with how they've worked with the humane community and others in placing the animals that were taken from him. (changes noted by brackets "{ }" were made by request of Cathy Liss)

MS. PICKHARDT: Edward Greer is the next speaker. I can't tell, Jennifer Skidmore, did you want to speak?

MR. GREEN: The name is Green.

MS. PICKHARDT: Green, I apologize.

MR. GREEN: It's not easy being Green, I've discovered that for many years.

My name is Ed Green, I'm the pro bono outside counsel for CAPS, Companion Animal Protection Society, which is a nonprofit organization that is devoted solely to investigation of puppy mills in pet stores throughout the country. And I want to express my appreciation to you, Mr. Under Secretary and Administrator and Deputy Administrator Gibson for holding this session. I think this is useful and important; certainly educational for me, because I don't do this full-time.

My primary message to you folks is to ask for responses to letters that we sent to Dr. Gibson in March and November of 2003. We've not had answers to those letters, yet. They are substantive letters. They ask significant questions of both specific instances, as well as policies of the USDA. I must say, I feel less lonesome, listening to the complaints of others who are concerned about delays in responding to FOIA requests. My suggestion to USDA, if you really want input from your stakeholders, timely responses are critical. Because, otherwise, what's the point? So, having said that, I will hold my peace and give you the letters that I'm talking about, just in case you might have lost them. Although I don't think you have. And here they are again.

MS. PICKHARDT: That concludes the list who, during the sign-up noted that they wanted to speak. We do have some

time remaining if there are additional that wanted to
comment. I think we're good.

[Whereupon, at 10:43 a.m., the session concluded.]